

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Petition to Revoke the
Probation of:

PHILLIP MICHAEL CASTILLO
996 Sonoma Avenue
Seaside, CA 93955

Registered Nurse License No. 364855

Respondent.

Case No. 2005-38

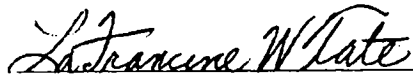
OAH No. 2008070052

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Registered Nursing as its Decision in the above-entitled matter.

This Decision shall become effective on December 24, 2008

IT IS SO ORDERED November 23, 2008.



President
Board of Registered Nursing
Department of Consumer Affairs
State of California

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Petition to Revoke
Probation Against:

PHILLIP MICHAEL CASTILLO

Registered Nurse License No. 364855

Respondent.

Case No. 2005-38

OAH No. 2008070052

PROPOSED DECISION

Administrative Law Judge Ruth S. Astle, State of California, Office of Administrative Hearings, heard this matter in Oakland, California, on September 9, 2008.

Rebecca M. Heinstein, Deputy Attorney General, represented complainant.

Respondent was present and represented himself.

Submission of the matter was deferred to September 15, 2008, for receipt of further evidence, which was received, marked for the record and considered. The matter was submitted on September 15, 2008.

FACTUAL FINDINGS

1. Ruth Ann Terry, M.P.H., R.N. made the petition to revoke probation in her official capacity as the Executive Officer of the Board of Registered Nursing, Department of Consumer Affairs.

2. On August 31, 1983, the Board of Registered Nursing (Board) issued Registered Nurse License No. 364855 to Phillip Michael Castillo (respondent). The license was in full force and effect at all times relevant to the charges brought in the Petition to Revoke Probation, and will expire March 31, 2009, unless renewed.

3. In a prior disciplinary action, the board issued a decision, effective November 14, 2005, in which respondent's license was revoked. However, the revocation was stayed and respondent's license was placed on probation for a period of three years, with certain

terms and conditions. Respondent violated numerous conditions of his probation including the following conditions:

a. Respondent was required by Probation Condition #1 to submit verification of fingerprinting by March 31, 2006. Respondent failed to comply with this condition until June 17, 2008. The fingerprint verification was received by the Board June 24, 2008, after the petition to revoke probation was filed and served on him by the Board.

b. Respondent was required by Probation Condition #5 to submit written quarterly reports in a timely manner. Respondent did not submit the reports for the entire year of 2007, in a timely manner. All of the 2007 reports were received by the Board on June 24, 2008.

c. Respondent was required by Probation Condition #7 to submit written quarterly work performance evaluations in a timely manner. Respondent did not submit any quarterly work performance evaluations to the Board. However, respondent testified that he asked his supervisor about the paperwork and she said there was no problem. Respondent provided a letter from his supervisor indicating that she will cooperate with filing the performance evaluations in the future. Respondent submitted two letters from the company that employs him. Both letters indicate that respondent is an excellent employee and that he has a wealth of knowledge that he uses to provide excellent care for his patients.

d. Respondent was required by Probation Condition #10 to complete nursing courses as required by the Board. Respondent was to get prior approval of the courses before taking them. Respondent failed to comply with this probation condition. He did not take a medication administration class (6 – 8 hours) approved by the Board. He did complete an on-line course (6 hours) on June 14, 2008. However, this course is not approved for respondent's compliance with his probation. He also failed to take nursing related courses (12 – 14 hours), due June 1, 2008. He did take 21 hours of on-line courses in June 2008. None of the courses were pre-approved by the Board. Respondent also presented the board an incomplete relapse prevention plan.

e. Respondent was required by Probation Condition #14 to submit a physical health assessment in a timely manner. Respondent should have submitted a physical health assessment by March 7, 2006. One was received by the Board on August 18, 2008.

f. Respondent was required by Probation Condition #15 to participate in a treatment/rehabilitation program for chemical dependency. Respondent did not submit timely verification of attendance at a nurse support group and/or AA/NA meetings. Respondent's Decision and Order did allow him to attend an additional 12-step meeting if a nurse support group was not available. Respondent provided proof of attendance at two meetings a week for the months of January and March, 2008 (respondent attends two different NA meetings a week).

g. Respondent was required by Probation Condition #16 to abstain from the use of alcohol. He tested positive for alcohol on August 30, 2006, September 27, 2006, October 13, 2006, and October 26, 2006. Respondent claims these positive tests were the result of using over the counter medications. That is no excuse. Respondent must know that when he is on probation, he cannot use those medications. On January 2, 2008, respondent tested positive for Tramadol. He testified that he received one pill from his sponsor for pain. He knows that this is unacceptable behavior.

h. Respondent was required by Probation Condition #17 to submit to biological fluid testing and drug screening. Respondent was required to register with Compass Vision by March 7, 2006. He did not register until July 26, 2006. Respondent tested out-of-range three times, once in 2006, once in 2007, and once in 2008. These tests indicate that respondent diluted his urine samples. He also failed to test on one occasion, July 5, 2007.

i. Respondent was required by Probation Condition #18 to undergo a mental health examination by mid-year 2006. Respondent submitted a mental health examination signed July 11, 2008 and received by the Board August 4, 2008. The mental health evaluator recommended 12 counseling sessions for respondent to work on some continuing issues, including his resistance to and resentment of authority.

j. Respondent was required by Probation Condition #19 to submit verification of on-going counseling. Respondent has not submitted any verification of counseling.

k. Respondent was required by Probation Condition #2 to comply with the Probation Program. Respondent failed to comply with the probation program in numerous ways set forth above.

4. Respondent is employed by California Forensic Medical Group (CFMG) in Monterey. He works in the county jail. He has been working for CFMG since November 2003. He is considered an outstanding employee and a good nurse. He is reliable with good assessment skills and excellent judgment.

5. Respondent presented two letters from people that he helps through a 12-step program. He acts as a sponsor to one person who credits respondent with his current sobriety. He also speaks at meetings and shares his commitment to sobriety.

6. Respondent has made a concerted effort to comply with the terms and conditions of his probation. However, it is too little, too late. Respondent indicated that he loves being a nurse and that he is good at this job. That is verified by almost five years of employment with the same employer. However, respondent clearly has problems with procrastination and resentment of authority. He needs to overcome these attitudes in order to successfully complete probation. Respondent needs a period of suspension for him to assure the Board that he is committed to meeting the terms and conditions of his probation.

LEGAL CONCLUSIONS

1. By reason of the matters set forth in Finding 3, cause for revocation of probation exists. Respondent failed to comply with Probation Conditions No. 1, 2, 5, 7, 10, 14, 15, 16, 17, 18, and 19.

2. The matters in mitigation, extenuation, and rehabilitation as set forth above have been considered in making the following order. The purpose of probation is not to be punitive, but to assure the public and the Board that respondent can practice safely.

ORDER

The Petition for Revocation of Probation of Phillip Michael Castillo is hereby granted and his license is revoked. However, the order of revocation is stayed and respondent's license shall be placed on probation for a period of three years upon the following terms and conditions:

SEVERABILITY CLAUSE – Each condition of probation contained herein is a separate and distinct condition. If any condition of this Order, or any application thereof, is declared unenforceable in whole, in part, or to any extent, the remainder of this Order, and all other applications thereof, shall not be affected. Each condition of this Order shall separately be valid and enforceable to the fullest extent permitted by law.

- (1) OBEY ALL LAWS - Respondent shall obey all federal, state and local laws. A full and detailed account of any and all violations of law shall be reported by the respondent to the Board in writing within seventy-two (72) hours of occurrence. To permit monitoring of compliance with this condition, respondent shall submit completed fingerprint forms and fingerprint fees within 45 days of the effective date of the decision, unless previously submitted as part of the licensure application process.

CRIMINAL COURT ORDERS: If respondent is under criminal court orders, including probation or parole, and the order is violated, this shall be deemed a violation of these probation conditions, and may result in the filing of an accusation and/or petition to revoke probation.

- (2) COMPLY WITH THE BOARD'S PROBATION PROGRAM - Respondent shall fully comply with the conditions of the Probation Program established by the Board and cooperate with representatives of the Board in its monitoring and investigation of the respondent's compliance with the Board's Probation Program. Respondent shall inform the Board in writing within no more than 15 days of any address change and shall at all times maintain an active, current license status with the Board, including during any period of suspension.

Upon successful completion of probation, respondent's license shall be fully restored.

- (3) **REPORT IN PERSON** - Respondent, during the period of probation, shall appear in person at interviews/meetings as directed by the Board or its designated representatives.

- (4) **RESIDENCY, PRACTICE, OR LICENSURE OUTSIDE OF STATE** - Periods of residency or practice as a registered nurse outside of California shall not apply toward a reduction of this probation time period. Respondent's probation is tolled, if and when he resides outside of California. The respondent must provide written notice to the Board within 15 days of any change of residency or practice outside the state, and within 30 days prior to re-establishing residency or returning to practice in this state.

Respondent shall provide a list of all states and territories where he has ever been licensed as a registered nurse, vocational nurse, or practical nurse. Respondent shall further provide information regarding the status of each license and any changes in such license status during the term of probation. Respondent shall inform the Board if he applies for or obtains a new nursing license during the term of probation.

- (5) **SUBMIT WRITTEN REPORTS** - Respondent, during the period of probation, shall submit or cause to be submitted such written reports/declarations and verification of actions under penalty of perjury, as required by the Board. These reports/declarations shall contain statements relative to respondent's compliance with all the conditions of the Board's Probation Program. Respondent shall immediately execute all release of information forms as may be required by the Board or its representatives.

Respondent shall provide a copy of this decision to the nursing regulatory agency in every state and territory in which he has a registered nurse license.

- (6) **FUNCTION AS A REGISTERED NURSE** - Respondent, during the period of probation, shall engage in the practice of registered nursing in California for a minimum of 24 hours per week for 6 consecutive months or as determined by the Board.

For purposes of compliance with the section, "engage in the practice of registered nursing" may include, when approved by the Board, volunteer work as a registered nurse, or work in any non-direct patient care position that requires licensure as a registered nurse.

The Board may require that advanced practice nurses engage in advanced practice nursing for a minimum of 24 hours per week for 6 consecutive months or as determined by the Board.

If respondent has not complied with this condition during the probationary term, and the respondent has presented sufficient documentation of his good faith efforts to comply with this condition, and if no other conditions have been violated, the Board, in its discretion, may grant an extension of the respondent's probation period up to one year without further hearing in order to comply with this condition. During the one-year extension, all original conditions of probation shall apply.

- (7) **EMPLOYMENT APPROVAL AND REPORTING REQUIREMENTS -** Respondent shall obtain prior approval from the Board before commencing or continuing any employment, paid or voluntary, as a registered nurse. Respondent shall cause to be submitted to the Board all performance evaluations and other employment related reports as a registered nurse upon request of the Board.

Respondent shall provide a copy of this decision to his employer and immediate supervisors prior to commencement of any nursing or other health care related employment.

In addition to the above, respondent shall notify the Board in writing within seventy-two (72) hours after he obtains any nursing or other health care related employment. Respondent shall notify the Board in writing within seventy-two (72) hours after he is terminated or separated, regardless of cause, from any nursing, or other health care related employment with a full explanation of the circumstances surrounding the termination or separation.

- (8) **SUPERVISION -** Respondent shall obtain prior approval from the Board regarding respondent's level of supervision and/or collaboration before commencing or continuing any employment as a registered nurse, or education and training that includes patient care.

Respondent shall practice only under the direct supervision of a registered nurse in good standing (no current discipline) with the Board of Registered Nursing, unless alternative methods of supervision and/or collaboration (e.g., with an advanced practice nurse or physician) are approved.

Respondent's level of supervision and/or collaboration may include, but is not limited to the following:

- (a) Maximum - The individual providing supervision and/or collaboration is present in the patient care area or in any other work setting at all times.
 - (b) Moderate - The individual providing supervision and/or collaboration is in the patient care unit or in any other work setting at least half the hours respondent works.
 - (c) Minimum - The individual providing supervision and/or collaboration has person-to-person communication with respondent at least twice during each shift worked.
 - (d) Home Health Care - If respondent is approved to work in the home health care setting, the individual providing supervision and/or collaboration shall have person-to-person communication with respondent as required by the Board each work day. Respondent shall maintain telephone or other telecommunication contact with the individual providing supervision and/or collaboration as required by the Board during each work day. The individual providing supervision and/or collaboration shall conduct, as required by the Board, periodic, on-site visits to patients' homes visited by the respondent with or without respondent present.
- (9) EMPLOYMENT LIMITATIONS - Respondent shall not work for a nurse's registry, in any private duty position as a registered nurse, a temporary nurse placement agency, a traveling nurse, or for an in-house nursing pool.

Respondent shall not work for a licensed home health agency as a visiting nurse unless the registered nursing supervision and other protections for home visits have been approved by the Board. Respondent shall not work in any other registered nursing occupation where home visits are required.

Respondent shall not work in any health care setting as a supervisor of registered nurses. The Board may additionally restrict respondent from supervising licensed vocational nurses and/or unlicensed assistive personnel on a case-by-case basis.

Respondent shall not work as a faculty member in an approved school of nursing or as an instructor in a Board approved continuing education program.

Respondent shall work only on a regularly assigned, identified and predetermined worksite(s) and shall not work in a float capacity.

If the respondent is working or intends to work in excess of 40 hours per week, the Board may request documentation to determine whether there should be restrictions on the hours of work.

- (10) **COMPLETE A NURSING COURSE(S)** - Respondent, at his own expense, shall enroll and successfully complete a course(s) relevant to the practice of registered nursing no later than six months prior to the end of his probationary term. Respondent shall obtain prior approval from the Board before enrolling in the course(s). Respondent shall submit to the Board the original transcripts or certificates of completion for the above required course(s). The Board shall return the original documents to respondent after photocopying them for its records.
- (11) **VIOLATION OF PROBATION** - If respondent violates the conditions of his probation, the Board after giving respondent notice and an opportunity to be heard, may set aside the stay order and impose the stayed discipline (revocation) of the respondent's license.

If during the period of probation, an accusation or petition to revoke probation has been filed against respondent's license or the Attorney General's Office has been requested to prepare an accusation or petition to revoke probation against the respondent's license, the probationary period shall automatically be extended and shall not expire until the accusation or petition has been acted upon by the Board.

- (12) **LICENSE SURRENDER** - During respondent's term of probation, if he ceases practicing due to retirement, health reasons or is otherwise unable to satisfy the conditions of probation, respondent may surrender his license to the Board. The Board reserves the right to evaluate respondent's request and to exercise its discretion whether to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances, without further hearing. Upon formal acceptance of the tendered license and wall certificate, respondent will no longer be subject to the conditions of probation.

Surrender of respondent's license shall be considered a disciplinary action and shall become a part of respondent's license history with the Board. A registered nurse whose license has been surrendered may petition the Board for reinstatement no sooner than the following minimum periods from the effective date of the disciplinary decision:

- 1) Two years for reinstatement of a license that was surrendered for any reason other than a mental or physical illness; or
- 2) One year for a license surrendered for a mental or physical illness.

- (13) **PHYSICAL EXAMINATION** - Within 45 days of the effective date of this decision, respondent, at his expense, shall have a licensed physician, nurse practitioner, or physician assistant, who is approved by the Board before the assessment is performed, submit an assessment of respondent's physical condition and capability to perform the duties of a registered nurse. Such an assessment shall be submitted in a format acceptable to the Board. If medically determined, a recommended treatment program will be instituted and followed by the respondent with the physician, nurse practitioner, or physician assistant providing written reports to the Board on forms provided by the Board.

If respondent is determined to be unable to practice safely as a registered nurse, the licensed physician, nurse practitioner, or physician assistant making this determination shall immediately notify the Board and respondent by telephone, and the Board shall request that the Attorney General's office prepare an accusation or petition to revoke probation. Respondent shall immediately cease practice and shall not resume practice until notified by the Board. During this period of suspension, respondent shall not engage in any practice for which a license issued by the Board is required until the Board has notified respondent that a medical determination permits respondent to resume practice. This period of suspension will not apply to the reduction of this probationary time period.

If the respondent fails to have the above assessment submitted to the Board within the 45-day requirement, respondent shall immediately cease practice and shall not resume practice until notified by the Board. This period of suspension will not apply to the reduction of this probationary time period. The Board may waive or postpone this suspension only if significant, documented evidence of mitigation is provided. Such evidence must establish good faith efforts by the respondent to obtain the assessment, and a specific date for compliance must be provided. Only one such waiver or extension may be permitted.

- (14) **PARTICIPATE IN TREATMENT/REHABILITATION PROGRAM FOR CHEMICAL DEPENDENCE** - Respondent, at his expense, shall successfully complete during the probationary period or shall have successfully completed prior to commencement of probation a Board-approved treatment/rehabilitation program of at least six months duration. As required, reports shall be submitted by the program on forms provided by the Board. If respondent has not completed a Board-approved treatment/rehabilitation program prior to commencement of probation, respondent, within 45 days from the effective date of the decision, shall be enrolled in a program. If a program is not successfully completed within the first nine months of probation, the Board shall consider respondent in violation of probation.

Based on Board recommendation, each week respondent shall be required to attend at least one, but no more than five 12-step recovery meetings or equivalent (e.g., Narcotics Anonymous, Alcoholics Anonymous, etc.) and a nurse support group as approved and directed by the Board. If a nurse support group is not available, an additional 12-step meeting or equivalent shall be added. Respondent shall submit dated and signed documentation confirming such attendance to the Board during the entire period of probation. Respondent shall continue with the recovery plan recommended by the treatment/rehabilitation program or a licensed mental health examiner and/or other ongoing recovery groups.

- (15) **ABSTAIN FROM USE OF PSYCHOTROPIC (MOOD-ALTERING) DRUGS** - Respondent shall completely abstain from the possession, injection or consumption by any route of all psychotropic (mood altering) drugs, including alcohol, except when the same are ordered by a health care professional legally authorized to do so as part of documented medical treatment. Respondent shall have sent to the Board, in writing and within fourteen (14) days, by the prescribing health professional, a report identifying the medication, dosage, the date the medication was prescribed, the respondent's prognosis, the date the medication will no longer be required, and the effect on the recovery plan, if appropriate.

Respondent shall identify for the Board a single physician, nurse practitioner or physician assistant who shall be aware of respondent's history of substance abuse and will coordinate and monitor any prescriptions for respondent for dangerous drugs, controlled substances or mood-altering drugs. The coordinating physician, nurse practitioner, or physician assistant shall report to the Board on a quarterly basis respondent's compliance with this condition. If any substances considered addictive have been prescribed, the report shall identify a program for the time limited use of any such substances.

The Board may require the single coordinating physician, nurse practitioner, or physician assistant to be a specialist in addictive medicine, or to consult with a specialist in addictive medicine.

- (16) **SUBMIT TO TESTS AND SAMPLES** - Respondent, at his expense, shall participate in a random, biological fluid testing or a drug screening program which the Board approves. The length of time and frequency will be subject to approval by the Board. Respondent is responsible for keeping the Board informed of respondent's current telephone number at all times. Respondent shall also ensure that messages may be left at the telephone number when he is not available and ensure that reports are submitted directly by the testing agency to the Board, as directed. Any confirmed positive finding shall be reported immediately to the Board by the program and the respondent shall be considered in violation of probation.

In addition, respondent, at any time during the period of probation, shall fully cooperate with the Board or any of its representatives, and shall, when requested, submit to such tests and samples as the Board or its representatives may require for the detection of alcohol, narcotics, hypnotics, dangerous drugs, or other controlled substances.

If respondent has a positive drug screen for any substance not legally authorized and not reported to the coordinating physician, nurse practitioner, or physician assistant, and the Board files a petition to revoke probation or an accusation, the Board may suspend respondent from practice pending the final decision on the petition to revoke probation or the accusation. This period of suspension will not apply to the reduction of this probationary time period.

If respondent fails to participate in a random, biological fluid testing or drug screening program within the specified time frame, respondent shall immediately cease practice and shall not resume practice until notified by the Board. After taking into account documented evidence of mitigation, if the Board files a petition to revoke probation or an accusation, the Board may suspend respondent from practice pending the final decision on the petition to revoke probation or the accusation. This period of suspension will not apply to the reduction of this probationary time period.

- (17) **MENTAL HEALTH EXAMINATION** - Respondent shall, within 45 days of the effective date of this decision, have a mental health examination including psychological testing as appropriate to determine his capability to perform the duties of a registered nurse. The examination will be performed by a psychiatrist, psychologist or other licensed mental health practitioner approved by the Board. The examining mental health practitioner will submit a written report of that assessment and recommendations to the Board. All costs are the responsibility of respondent. Recommendations for treatment, therapy or counseling made as a result of the mental health examination will be instituted and followed by the respondent.

If respondent is determined to be unable to practice safely as a registered nurse, the licensed mental health care practitioner making this determination shall immediately notify the Board and respondent by telephone, and the Board shall request that the Attorney General's office prepare an accusation or petition to revoke probation. Respondent shall immediately cease practice and may not resume practice until notified by the Board. During this period of suspension, respondent shall not engage in any practice for which a license issued by the Board is required, until the Board has notified respondent that a mental health determination permits respondent to resume practice. This period of suspension will not apply to the reduction of this probationary time period.

If respondent fails to have the above assessment submitted to the Board within the 45-day requirement, respondent shall immediately cease practice and shall not resume practice until notified by the Board. This period of suspension will not apply to the reduction of this probationary time period. The Board may waive or postpone this suspension only if significant, documented evidence of mitigation is provided. Such evidence must establish good faith efforts by the respondent to obtain the assessment, and a specific date for compliance must be provided. Only one such waiver or extension may be permitted.

- (18) THERAPY OR COUNSELING PROGRAM - Respondent, at his expense, shall participate in an on-going counseling program until such time as the Board releases him from this requirement and only upon the recommendation of the counselor. Written progress reports from the counselor will be required at various intervals.
- (19) ACTUAL SUSPENSION OF LICENSE - Respondent is suspended from the practice of registered nursing for one month beginning the effective date of this decision.

During the suspension period, all probation conditions are in full force and effect except those relating to actual nursing practice. This period of suspension will not apply to the reduction of this probationary time period.

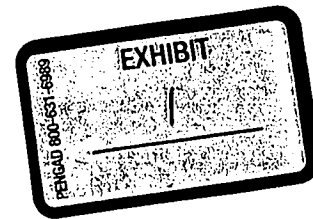
DATED: 9/22/08

Ruth S. Astle
RUTH S. ASTLE
Administrative Law Judge
Office of Administrative Hearings

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BOARD OF
REGISTERED NURSING
SACRAMENTO

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9 **BEFORE THE**
10 **BOARD OF REGISTERED NURSING**
11 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

12 In the Matter of the Petition to Revoke Probation
Against:

13 **PHILLIP MICHAEL CASTILLO**
14 996 Sonoma Avenue
Seaside, CA 93955-5242

15 Registered Nurse License No. 364855

16 Respondent.

Case No. 2005-38

**PETITION TO REVOKE
PROBATION**

18 Complainant alleges:

19 **PARTIES**

20 1. Ruth Ann Terry, M.P.H., R.N. (Complainant) brings this Petition to
21 Revoke Probation solely in her official capacity as the Executive Officer of the Board of
22 Registered Nursing, Department of Consumer Affairs.

23 2. On or about August 31, 1983, the Board of Registered Nursing issued
24 Registered Nurse License No. 364855 to Phillip Michael Castillo (Respondent). The license was
25 in full force and effect at all times relevant to the charges brought herein, and will expire on
26 March 31, 2009, unless renewed.

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PRIOR DISCIPLINE

3. In a disciplinary action entitled "In the Matter of Accusation Against Phillip Michael Castillo," Case No. 2005-38, the Board of Registered Nursing issued a decision, effective November 14, 2005, in which Respondent's Registered Nurse License was revoked. However, the revocation was stayed and Respondent's license was placed on probation for a period of three (3) years, with certain terms and conditions. A copy of the decision is attached as Exhibit A and is incorporated by reference.

FIRST CAUSE TO REVOKE PROBATION

(Failed to Obey All Laws)

4. At all times after the effective date of Respondent's probation, Probation Condition #1 stated:

Obey All Laws. Respondent shall obey all federal, state and local laws. A full and detailed account of any and all violations of law shall be reported by Respondent to the Board in writing within seventy-two (72) hours of occurrence. To permit monitoring of compliance with this condition, Respondent shall submit completed fingerprint forms and fingerprint fees within 45 days of the effective date of the decision, unless previously submitted as part of the licensure application process.
Criminal Court Orders. If Respondent is under criminal court orders, including probation or parole, and the order is violated, this shall be deemed a violation of these probation conditions, and may result in the filing of an accusation and/or petition to revoke probation.

5. Respondent's probation is subject to revocation because he failed to comply with Probation Condition #1, referenced above. Respondent failed to submit verification of fingerprinting by March 31, 2006.

SECOND CAUSE TO REVOKE PROBATION

(Failed to Submit Written Reports)

6. At all times after the effective date of Respondent's probation, Probation Condition #5 stated:

Submit Written Reports. Respondent, during the period of probation, shall submit or cause to be submitted such written reports/declarations and verifications of actions under penalty of perjury, as required by the Board. These reports/declarations shall contain statements relative to Respondent's compliance with all the conditions of the Board's Probation Program. Respondent shall immediately execute all release of information forms as

1 required by the Board or its representatives.

2 7. Respondent's probation is subject to revocation because he failed to
3 comply with Probation Condition #5, referenced above, in that he failed to submit the following
4 quarterly reports:

- 5 a. January through March, 2007;
- 6 b. April through June, 2007;
- 7 c. July through September, 2007;
- 8 d. October through December, 2007.

9 **THIRD CAUSE TO REVOKE PROBATION**

10 **(Employment Approval and Reporting Requirements)**

11 8. At all times after the effective date of Respondent's probation, Probation
12 Condition No. 7 stated:

13 **Employment Approval and Reporting Requirements.** Respondent shall
14 obtain prior approval from the Board before commencing or continuing
15 any employment, paid or voluntary, as a registered nurse. Respondent
16 shall cause to be submitted to the Board all performance evaluations
17 and other employment related reports as a registered nurse upon request
18 of the Board. Respondent shall provide a copy of this Decision to his
19 employer and immediate supervisors prior to commencement of any
20 nursing or other health care related employment. In addition to the
21 above, Respondent shall notify the Board in writing within seventy-two (72)
22 hours after he obtains any nursing or other health care related employment.
23 Respondent shall notify the Board in writing within seventy-two (72) hours
24 after he is terminated or separated, regardless of cause, from any nursing,
25 or other health care related employment with a full explanation of the
26 circumstances surrounding the termination or separation.

27 9. Respondent's probation is subject to revocation because he failed to
28 comply with Probation Condition No. 7, referenced above, in that, as of September, 2006, he
failed to submit quarterly Work Performance Evaluations.

23 **FOURTH CAUSE TO REVOKE PROBATION**

24 **(Failed to Complete Nursing Course)**

25 10. At all times after the effective date of Respondent's probation, Probation
26 Condition No. 10 stated:

27 **Complete a Nursing Course(s).** Respondent, at his own expense, shall
28 enroll and successfully complete a course(s) relevant to the practice of

1 registered nursing no later than six months prior to the end of his
2 probationary term. Respondent shall obtain prior approval from the
3 Board before enrolling in the course(s). Respondent shall submit to the
4 Board the original transcripts or certificates of completion for the above
5 required course(s). The Board shall return the original documents to
6 Respondent after photocopying them for its records.

7 11. Respondent's probation is subject to revocation because he failed to
8 comply with Probation Condition No. 10, referenced above, in that he failed to complete the
9 following coursework:

- 10 a. Relapse Prevention and Plan Development, due March 31, 2006;
11 b. Medication Administration (6-8 hours), due December 31, 2006;
12 c. Professional Ethics/Legal Aspects of Nursing (4-6 hours), due June 1,
13 2008;
14 d. Nursing Related Courses (12-14 hours), due June 1, 2008.

15 **FIFTH CAUSE TO REVOKE PROBATION**

16 **(Failed to Pay Cost Recovery)**

17 12. At all times after the effective date of Respondent's probation, Probation
18 Condition #11 stated:

19 **Cost Recovery.** Respondent shall pay to the Board costs associated
20 with its investigation and enforcement pursuant to Business and
21 Professions Code section 125.3 in the amount of \$7,000.00.
22 Respondent shall be permitted to pay these costs in a payment plan
23 approved by the Board, with payments to be completed no later than
24 three months prior to the end of the probation term. If Respondent
25 has not complied with this condition during the probationary term,
26 and Respondent has presented sufficient documentation of her good
27 faith efforts to comply with this condition, and if no other conditions
28 have been violated, the Board, in its discretion, may grant an extension
of Respondent's probation period up to one year without further hearing
in order to comply with this condition. During the one year extension,
all original conditions of probation will apply.

13. Respondent's probation is subject to revocation because he failed to
comply with Probation Condition #11, referenced above, in that he failed to pay \$7,000.00 in
cost recovery.

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1 **Participate in Treatment/Rehabilitation Program for Chemical**
2 **Dependency.** Respondent, at his expense, shall successfully complete
3 during the probationary period or shall have successfully completed
4 prior to commencement of probation a Board-approved
5 treatment/rehabilitation program of at least six months duration.
6 As required, reports shall be submitted by the program on forms
7 provided by the Board. If Respondent has not completed a
8 Board-approved treatment/rehabilitation program prior to commencement
9 of probation, Respondent, within 45 days from the effective date of the
10 decision, shall be enrolled in a program. If a program is not successfully
11 completed within the first nine months of probation, the Board shall
12 consider Respondent in violation of probation. Based on Board
13 recommendation, each week Respondent shall be required to attend
14 at least one, but no more than five 12-step recovery meetings or
15 equivalent (e.g., Narcotics Anonymous, Alcoholics Anonymous, etc.)
16 and a nurse support group as approved and directed by the Board.
17 If a nurse support group is not available, an additional 12-step meeting
18 or equivalent shall be added. Respondent shall submit dated and
19 signed documentation confirming such attendance to the Board
20 during the entire period of probation. Respondent shall continue
21 with the recovery plan recommended by the treatment/rehabilitation
22 program or a licensed mental health examiner and/or other ongoing
23 recovery groups.

13 17. Respondent's probation is subject to revocation because he failed to
14 comply with Probation Condition #15, referenced above. Respondent failed to submit
15 verification of attendance for Nurse Support Group and AA/NA meetings.

16 **EIGHTH CAUSE TO REVOKE PROBATION**

17 **(Failed to Abstain from Use of Psychotropic (Mood Altering) Drugs)**

18 18. At all times after the effective date of Respondent's probation, Probation
19 Condition #16 stated:

20 **Abstain from Use of Psychotropic (Mood-Altering) Drugs.**
21 Respondent shall completely abstain from the possession, injection
22 or consumption by any route of all Psychotropic (mood altering)
23 drugs, including alcohol, except when the same are ordered by a
24 health care professional legally authorized to do so as part of
25 documented medical treatment. Respondent shall have sent to the
26 Board, in writing and within fourteen (14) days, by the
27 prescribing health professional, a report identifying the medication,
28 dosage, the date the medication was prescribed, the Respondent's
prognosis, the date the medication will no longer be required, and
the effect on the recovery plan, if appropriate. Respondent shall
identify for the Board a single physician, nurse practitioner or
physician assistant who shall be aware of Respondent's history of
substance abuse and will coordinate and monitor any prescriptions
for Respondent for dangerous drugs, controlled substances or mood-
altering drugs. The coordinating physician, nurse practitioner, or
physician assistant shall report to the Board on a quarterly basis

Respondent's compliance with this condition. If any substances considered addictive have been prescribed, the report shall identify a program for the time limited use of any such substances. The Board may require the single coordinating physician, nurse practitioner, or physician assistant to be a specialist in addictive medicine, or to consult with a specialist in addictive medicine.

19. Respondent's probation is subject to revocation because he failed to comply with Probation Condition #16, referenced above. Respondent failed to abstain from the use of alcohol by testing positive for alcohol on or about August 11, 2006, August 30, 2006, September 13, 2006, September 27, 2006, and October 13, 2006. On or about January 2, 2008, Respondent tested positive for Tramadol.

NINTH CAUSE TO REVOKE PROBATION

(Failed to Submit to Tests and Samples)

20. At all times after the effective date of Respondent's probation, Probation Condition #17 stated:

Submit to Tests and Samples. Respondent, at his expense, shall participate in a random, biological fluid testing or a drug screening program which the Board approves. The length of time and frequency will be subject to approval by the Board. Respondent is responsible for keeping the Board informed of Respondent's current telephone number at all times. Respondent shall also ensure that messages may be left at the telephone number when he is not available and ensure that reports are submitted directly by the testing agency to the Board, as directed. Any confirmed positive finding shall be reported immediately to the Board by the program and Respondent shall be considered in violation of probation. In addition, Respondent, at any time during the period of probation, shall fully cooperate with the Board or any of its representatives, and shall, when requested, submit to such tests and samples as the Board or its representatives may require for the detection of alcohol, narcotics, hypnotics, dangerous drugs, or other controlled substances. If Respondent has a positive drug screen for any substance not legally authorized and not reported to the coordinating physician, nurse practitioner, or physician assistant, and the Board files a petition to revoke probation or an accusation, the Board may suspend Respondent from practice pending the final decision on the petition to revoke probation or the accusation. This period of suspension will not apply to the reduction of this probationary time period. If Respondent fails to participate in a random, biological fluid testing or drug screening program within the specified time frame, Respondent shall immediately cease practice and shall not resume practice until notified by the Board. After taking into account documented evidence of mitigation, if the Board files a petition to revoke probation or an accusation, the Board may suspend Respondent from practice pending the final decision on the petition to revoke probation or the accusation. This period of suspension will not apply to the reduction

1 of this probationary time period.

2 21. Respondent's probation is subject to revocation because he failed to
3 comply with Probation Condition #17, referenced above. Respondent was instructed to register
4 with Compass Vision by March 7, 2006. He failed to register with Compass Vision until July 26,
5 2006. Respondent tested positive for alcohol on or about August 11, 2006, August 30, 2006,
6 September 13, 2006, September 27, 2006, and October 13, 2006. Respondent tested "out of
7 range" on or about December 8, 2006, December 20, 2007, and March 28, 2008. Respondent
8 failed to test on or about July 5, 2007. Respondent's test was diluted on or about August 16,
9 2007. On or about January 2, 2008, Respondent tested positive for Tramadol.

10 **TENTH CAUSE TO REVOKE PROBATION**

11 **(Failed to Undergo Mental Health Examination in a Timely Manner)**

12 22. At all times after the effective date of Respondent's probation, Probation
13 Condition #18 stated:

14 **Mental Health Examination.** Respondent shall, within 45 days of
15 the effective date of this Decision, have a mental health examination
16 including psychological testing as appropriate to determine his
17 capability to perform the duties of a registered nurse. The examination
18 will be performed by a psychiatrist, psychologist or other licensed
19 mental health practitioner approved by the Board. The examining
20 mental health practitioner will submit a written report of that assessment
21 and recommendation to the Board. All costs are the responsibility of
22 Respondent. Recommendations for treatment, therapy or counseling
23 made as a result of the mental health examination will be instituted
24 and followed by Respondent. If Respondent is determined to be unsafe
25 to practice safely as a registered nurse, the licensed mental health care
26 practitioner making this determination shall immediately notify the
27 Board and Respondent by telephone, and the Board shall request that
28 the Attorney General's Office prepare an accusation or petition to
revoke probation. Respondent shall immediately cease practice and
may not resume practice until notified by the Board. During this
period of suspension, Respondent shall not engage in any practice for
which a license issued by the Board is required, until the Board has
notified Respondent that a mental health determination permits Respondent
to resume practice. This period of suspension will not apply to the
reduction of this probationary time period.

23. Respondent's probation is subject to revocation because he failed to
comply with Probation Condition #18, referenced above. Respondent failed to submit a mental
health examination.

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2. Suspend Registered Nurse License No. 364855 issued to Philip Michael Castillo pursuant to Condition No. 17.
3. Taking such other and further action as deemed necessary and proper.

DATED: 6/12/08

Rebecca Hansten for:

RUTH ANN TERRY, M.P.H., R.N.
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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Exhibit A
Decision and Order
Board of Registered Nursing Case No. 2005-38

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

PHILLIP MICHAEL CASTILLO, R.N.
996 Sonoma Avenue
Seaside, CA 93955

Registered Nurse License No. 364855

Respondent

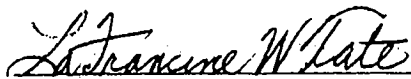
Case No. 2005-38

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Registered Nursing, Department of Consumer Affairs, as it's Decision in the above entitled matter.

This Decision shall become effective on November 14, 2005.

IT IS SO ORDERED October 13, 2005.



President
Board of Registered Nursing
Department of Consumer Affairs
State of California

1 BILL LOCKYER, Attorney General
of the State of California
2 GLORIA A. BARRIOS, State Bar No. 94811
Deputy Attorney General
3 California Department of Justice
1515 Clay Street, 20th Floor
4 P. O. Box 70550
Oakland, CA 94612-0550
5 Telephone: (510) 622-2141
Facsimile: (510) 622-2270
6 E-mail: gloria.barrios@doj.ca.gov

7 Attorneys for Complainant

9 **BEFORE THE**
10 **BOARD OF REGISTERED NURSING**
11 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

12 In the Matter of the Accusation Against:

13 PHILLIP MICHAEL CASTILLO
996 Sonoma Avenue
14 Seaside, CA 93955

15 Registered Nurse License No. 364855

16 Respondent.

Case No.: 2005-38

OAH No.: N2005020199

**STIPULATED SETTLEMENT
AND DISCIPLINARY ORDER**

17
18 IT IS HEREBY STIPULATED AND AGREED by and between the parties
19 to the above-entitled proceedings that the following matters are true:

20 **PARTIES**

21 1. Ruth Ann Terry, M.P.H., R.N. (Complainant) is the Executive Officer of
22 the Board of Registered Nursing. She brought this action solely in her official capacity and
23 is represented in this matter by Bill Lockyer, Attorney General of the State of California,
24 by Gloria A. Barrios, Deputy Attorney General.

25 2. Respondent Phillip Michael Castillo (Respondent) is representing himself in this
26 proceeding.

27 3. On or about August 31, 1983, the Board of Registered Nursing issued Registered
28 Nurse License No. 364855 to Phillip Michael Castillo (Respondent). The License was in full

1 force and effect at all times relevant to the charges brought in Accusation No. 2005-38 and
2 will expire on March 31, 2007, unless renewed.

3 **JURISDICTION**

4 4. Accusation No. 2005-38 was filed before the Board of Registered Nursing
5 (Board), Department of Consumer Affairs, and is currently pending against Respondent.
6 The Accusation and all other statutorily required documents were properly served on Respondent
7 on February 16, 2005. Respondent timely filed his Notice of Defense contesting the Accusation.
8 A copy of Accusation No. 2005-38 is attached as Exhibit A and incorporated herein by reference.

9 **ADVISEMENT AND WAIVERS**

10 5. Respondent has carefully read, and understands the charges and allegations in
11 Accusation No. 2005-38. Respondent has also carefully read, and understands the effects of this
12 Stipulated Settlement and Disciplinary Order.

13 6. Respondent is fully aware of his legal rights in this matter, including the right
14 to a hearing on the charges and allegations in the Accusation; the right to be represented by
15 counsel at his own expense; the right to confront and cross-examine the witnesses against him;
16 the right to present evidence and to testify on his own behalf; the right to the issuance of
17 subpoenas to compel the attendance of witnesses and the production of documents; the right
18 to reconsideration and court review of an adverse decision; and all other rights accorded by
19 the California Administrative Procedure Act and other applicable laws.

20 7. Respondent voluntarily, knowingly, and intelligently waives and gives up each
21 and every right set forth above.

22 **CULPABILITY**

23 8. Respondent admits the truth of each and every charge in paragraphs 11 through 14
24 in Accusation No. 2005-38.

25 9. Respondent agrees that his Registered Nurse License is subject to discipline and
26 he agrees to be bound by the Board's imposition of discipline as set forth in the Disciplinary
27 Order below.

28 ///

CONTINGENCY

10. This stipulation shall be subject to approval by the Board of Registered Nursing. Respondent understands and agrees that counsel for Complainant and the staff of the Board of Registered Nursing may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

11. The parties understand and agree that facsimile copies of this Stipulated Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

12. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Registered Nurse License No. 364855 issued to Respondent Phillip Michael Castillo is revoked. However, the revocation is stayed and Respondent is placed on probation for three (3) years on the following terms and conditions.

Severability Clause:

Each condition of probation contained herein is a separate and distinct condition. If any condition of this Order, or any application thereof, is declared unenforceable in whole, in part, or to any extent, the remainder of this Order, and all other applications thereof, shall not be affected. Each condition of this Order shall separately be valid and enforceable to the fullest extent permitted by law.

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1 1. **Obey All Laws:**

2 Respondent shall obey all federal, state and local laws. A full and detailed
3 account of any and all violations of law shall be reported by Respondent to the Board in writing
4 within seventy-two (72) hours of occurrence. To permit monitoring of compliance with this
5 condition, Respondent shall submit completed fingerprint forms and fingerprint fees within
6 45 days of the effective date of the decision, unless previously submitted as part of the licensure
7 application process.

8 **Criminal Court Orders:**

9 If Respondent is under criminal court orders, including probation or parole,
10 and the order is violated, this shall be deemed a violation of these probation conditions,
11 and may result in the filing of an accusation and/or petition to revoke probation.

12 2. **Comply with the Board's Probation Program:**

13 Respondent shall fully comply with the conditions of the Probation Program
14 established by the Board and cooperate with representatives of the Board in its monitoring and
15 investigation of the Respondent's compliance with the Board's Probation Program. Respondent
16 shall inform the Board in writing within no more than 15 days of any address change and shall
17 at all times maintain an active, current license status with the Board, including during any period
18 of suspension.

19 Upon successful completion of probation, Respondent's license shall be
20 fully restored.

21 3. **Report in Person:**

22 Respondent, during the period of probation, shall appear in person at
23 interviews/meetings as directed by the Board or its designated representatives.

24 4. **Residency, Practice, or Licensure Outside of State:**

25 Periods of residency or practice as a registered nurse outside of California
26 shall not apply toward a reduction of this probation time period. Respondent's probation is
27 tolled, if and when he resides outside of California. Respondent must provide written notice
28 to the Board within 15 days of any change of residency or practice outside the state, and

within 30 days prior to re-establishing residency or returning to practice in this state.

Respondent shall provide a list of all states and territories where he has ever been licensed as a registered nurse, vocational nurse, or practical nurse. Respondent shall further provide information regarding the status of each license and any changes in such license status during the term of probation. Respondent shall inform the Board if he applies for or obtains a new nursing license during the term of probation.

5. **Submit Written Reports:**

Respondent, during the period of probation, shall submit or cause to be submitted such written reports/declarations and verification of actions under penalty of perjury, as required by the Board. These reports/declarations shall contain statements relative to Respondent's compliance with all the conditions of the Board's Probation Program. Respondent shall immediately execute all release of information forms as may be required by the Board or its representatives.

Respondent shall provide a copy of this Decision to the nursing regulatory agency in every state and territory in which he has a registered nurse license.

6. **Function as a Registered Nurse:**

Respondent, during the period of probation, shall engage in the practice of registered nursing in California for a minimum of 24 hours per week for 6 consecutive months or as determined by the Board.

For purposes of compliance with the section, "engage in the practice of registered nursing" may include, when approved by the Board, volunteer work as a registered nurse, or work in any non-direct patient care position that requires licensure as a registered nurse.

The Board may require that advanced practice nurses engage in advanced practice nursing for a minimum of 24 hours per week for 6 consecutive months or as determined by the Board.

If Respondent has not complied with this condition during the probationary term, and Respondent has presented sufficient documentation of his good faith efforts to comply with this condition, and if no other conditions have been violated, the Board, in its discretion,

may grant an extension of Respondent's probation period up to one year without further hearing in order to comply with this condition. During the one year extension, all original conditions of probation shall apply.

7. **Employment Approval and Reporting Requirements:**

Respondent shall obtain prior approval from the Board before commencing or continuing any employment, paid or voluntary, as a registered nurse. Respondent shall cause to be submitted to the Board all performance evaluations and other employment related reports as a registered nurse upon request of the Board.

Respondent shall provide a copy of this Decision to his employer and immediate supervisors prior to commencement of any nursing or other health care related employment.

In addition to the above, Respondent shall notify the Board in writing within seventy-two (72) hours after he obtains any nursing or other health care related employment. Respondent shall notify the Board in writing within seventy-two (72) hours after he is terminated or separated, regardless of cause, from any nursing, or other health care related employment with a full explanation of the circumstances surrounding the termination or separation.

8. **Supervision:**

Respondent shall obtain prior approval from the Board regarding Respondent's level of supervision and/or collaboration before commencing or continuing any employment as a registered nurse, or education and training that includes patient care.

Respondent shall practice only under the direct supervision of a registered nurse in good standing (no current discipline) with the Board of Registered Nursing, unless alternative methods of supervision and/or collaboration (e.g., with an advanced practice nurse or physician) are approved.

Respondent's level of supervision and/or collaboration may include, but is not limited to the following:

(a) **Maximum:**

The individual providing supervision and/or collaboration is present in the patient care area or in any other work setting at all times.

1 (b) **Moderate:**

2 The individual providing supervision and/or collaboration is in the patient
3 care unit or in any other work setting at least half the hours Respondent works.

4 (c) **Minimum:**

5 The individual providing supervision and/or collaboration has person-to-
6 person communication with Respondent at least twice during each shift worked.

7 (d) **Home Health Care:**

8 If Respondent is approved to work in the home health care setting,
9 the individual providing supervision and/or collaboration shall have person-to-person
10 communication with Respondent as required by the Board each work day. Respondent shall
11 maintain telephone or other telecommunication contact with the individual providing supervision
12 and/or collaboration as required by the Board during each work day. The individual providing
13 supervision and/or collaboration shall conduct, as required by the Board, periodic, on-site visits
14 to patients' homes visited by Respondent with or without Respondent present.

15 9. **Employment Limitations:**

16 Respondent shall not work for a nurse's registry, in any private duty position
17 as a registered nurse, a temporary nurse placement agency, a traveling nurse, or for an in-house
18 nursing pool.

19 Respondent shall not work for a licensed home health agency as a visiting nurse
20 unless the registered nursing supervision and other protections for home visits have been
21 approved by the Board. Respondent shall not work in any other registered nursing occupation
22 where home visits are required.

23 Respondent shall not work in any health care setting as a supervisor of registered
24 nurses. The Board may additionally restrict Respondent from supervising licensed vocational
25 nurses and/or unlicensed assistive personnel on a case-by-case basis.

26 Respondent shall not work as a faculty member in an approved school of nursing
27 or as an instructor in a Board approved continuing education program.

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Respondent shall work only on a regularly assigned, identified and predetermined worksite(s) and shall not work in a float capacity.

If Respondent is working or intends to work in excess of 40 hours per week, the Board may request documentation to determine whether there should be restrictions on the hours of work.

10. **Complete a Nursing Course(s):**

Respondent, at his own expense, shall enroll and successfully complete a course(s) relevant to the practice of registered nursing no later than six months prior to the end of her probationary term.

Respondent shall obtain prior approval from the Board before enrolling in the course(s). Respondent shall submit to the Board the original transcripts or certificates of completion for the above required course(s). The Board shall return the original documents to Respondent after photocopying them for its records.

11. **Cost Recovery:**

Respondent shall pay to the Board costs associated with its investigation and enforcement pursuant to Business and Professions Code section 125.3 in the amount of \$7,000.00. Respondent shall be permitted to pay these costs in a payment plan approved by the Board, with payments to be completed no later than three months prior to the end of the probation term.

If Respondent has not complied with this condition during the probationary term, and Respondent has presented sufficient documentation of his good faith efforts to comply with this condition, and if no other conditions have been violated, the Board, in its discretion, may grant an extension of Respondent's probation period up to one year without further hearing in order to comply with this condition. During the one year extension, all original conditions of probation will apply.

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1 12. **Violation of Probation:**

2 If Respondent violates the conditions of his probation, the Board after giving
3 Respondent notice and an opportunity to be heard, may set aside the stay order and impose the
4 stayed discipline (revocation/suspension) of Respondent's license.

5 If during the period of probation, an accusation or petition to revoke probation
6 has been filed against Respondent's license or the Attorney General's Office has been requested
7 to prepare an accusation or petition to revoke probation against Respondent's license, the
8 probationary period shall automatically be extended and shall not expire until the accusation
9 or petition has been acted upon by the Board.

10 13. **License Surrender:**

11 During Respondent's term of probation, if he ceases practicing due to retirement,
12 health reasons or is otherwise unable to satisfy the conditions of probation, Respondent may
13 surrender his license to the Board. The Board reserves the right to evaluate Respondent's request
14 and to exercise its discretion whether to grant the request, or to take any other action deemed
15 appropriate and reasonable under the circumstances, without further hearing. Upon formal
16 acceptance of the tendered license and wall certificate, Respondent will no longer be subject to
17 the conditions of probation.

18 Surrender of Respondent's license shall be considered a disciplinary action
19 and shall become a part of Respondent's license history with the Board. A registered nurse
20 whose license has been surrendered may petition the Board for reinstatement no sooner than
21 the following minimum periods from the effective date of the disciplinary decision:

22 (a) Two years for reinstatement of a license that was surrendered for any
23 reason other than a mental or physical illness; or

24 (b) One year for a license surrendered for a mental or physical illness.

25 14. **Physical Examination:**

26 Within 45 days of the effective date of this Decision, Respondent, at his expense,
27 shall have a licensed physician, nurse practitioner, or physician assistant, who is approved by
28 the Board before the assessment is performed, submit an assessment of the Respondent's

physical condition and capability to perform the duties of a registered nurse. Such an assessment shall be submitted in a format acceptable to the Board. If medically determined, a recommended treatment program will be instituted and followed by the Respondent with the physician, nurse practitioner, or physician assistant providing written reports to the Board on forms provided by the Board.

If Respondent is determined to be unable to practice safely as a registered nurse, the licensed physician, nurse practitioner, or physician assistant making this determination shall immediately notify the Board and Respondent by telephone, and the Board shall request that the Attorney General's office prepare an accusation or petition to revoke probation. Respondent shall immediately cease practice and shall not resume practice until notified by the Board. During this period of suspension, Respondent shall not engage in any practice for which a license issued by the Board is required until the Board has notified Respondent that a medical determination permits Respondent to resume practice. This period of suspension will not apply to the reduction of this probationary time period.

If Respondent fails to have the above assessment submitted to the Board within the 45 day requirement, Respondent shall immediately cease practice and shall not resume practice until notified by the Board. This period of suspension will not apply to the reduction of this probationary time period. The Board may waive or postpone this suspension only if significant, documented evidence of mitigation is provided. Such evidence must establish good faith efforts by Respondent to obtain the assessment, and a specific date for compliance must be provided. Only one such waiver or extension may be permitted.

15. **Participate in Treatment/Rehabilitation Program for Chemical Dependence:**

Respondent, at his expense, shall successfully complete during the probationary period or shall have successfully completed prior to commencement of probation a Board-approved treatment/rehabilitation program of at least six months duration. As required, reports shall be submitted by the program on forms provided by the Board. If Respondent has not completed a Board-approved treatment/rehabilitation program prior to commencement of probation, Respondent, within 45 days from the effective date of the decision, shall be

1 enrolled in a program. If a program is not successfully completed within the first nine months
2 of probation, the Board shall consider Respondent in violation of probation.

3 Based on Board recommendation, each week Respondent shall be required to
4 attend at least one, but no more than five 12-step recovery meetings or equivalent (e.g., Narcotics
5 Anonymous, Alcoholics Anonymous, etc.) and a nurse support group as approved and directed
6 by the Board. If a nurse support group is not available, an additional 12-step meeting or
7 equivalent shall be added. Respondent shall submit dated and signed documentation confirming
8 such attendance to the Board during the entire period of probation. Respondent shall continue
9 with the recovery plan recommended by the treatment/rehabilitation program or a licensed
10 mental health examiner and/or other ongoing recovery groups.

11 16. **Abstain from Use of Psychotropic (Mood-Altering) Drugs:**

12 Respondent shall completely abstain from the possession, injection or
13 consumption by any route of all controlled substances and all psychotropic (mood altering)
14 drugs, including alcohol, except when the same are ordered by a health care professional legally
15 authorized to do so as part of documented medical treatment. Respondent shall have sent
16 to the Board, in writing and within fourteen (14) days, by the prescribing health professional,
17 a report identifying the medication, dosage, the date the medication was prescribed, the
18 Respondent's prognosis, the date the medication will no longer be required, and the effect
19 on the recovery plan, if appropriate.

20 Respondent shall identify for the Board a single physician, nurse practitioner
21 or physician assistant who shall be aware of Respondent's history of substance abuse and
22 will coordinate and monitor any prescriptions for Respondent for dangerous drugs, controlled
23 substances or mood-altering drugs. The coordinating physician, nurse practitioner, or physician
24 assistant shall report to the Board on a quarterly basis Respondent's compliance with this
25 condition. If any substances considered addictive have been prescribed, the report shall identify
26 a program for the time limited use of any such substances.

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1 The Board may require the single coordinating physician, nurse practitioner,
2 or physician assistant to be a specialist in addictive medicine, or to consult with a specialist
3 in addictive medicine.

4 17. Submit to Tests and Samples:

5 Respondent, at his expense, shall participate in a random, biological fluid testing
6 or a drug screening program which the Board approves. The length of time and frequency will be
7 subject to approval by the Board. Respondent is responsible for keeping the Board informed of
8 Respondent's current telephone number at all times. Respondent shall also ensure that messages
9 may be left at the telephone number when he is not available and ensure that reports are
10 submitted directly by the testing agency to the Board, as directed. Any confirmed positive
11 finding shall be reported immediately to the Board by the program and Respondent shall be
12 considered in violation of probation.

13 In addition, Respondent, at any time during the period of probation, shall fully
14 cooperate with the Board or any of its representatives, and shall, when requested, submit to such
15 tests and samples as the Board or its representatives may require for the detection of alcohol,
16 narcotics, hypnotics, dangerous drugs, or other controlled substances.

17 If Respondent has a positive drug screen for any substance not legally authorized
18 and not reported to the coordinating physician, nurse practitioner, or physician assistant, and the
19 Board files a petition to revoke probation or an accusation, the Board may suspend Respondent
20 from practice pending the final decision on the petition to revoke probation or the accusation.
21 This period of suspension will not apply to the reduction of this probationary time period.

22 If Respondent fails to participate in a random, biological fluid testing or drug
23 screening program within the specified time frame, Respondent shall immediately cease practice
24 and shall not resume practice until notified by the Board. After taking into account documented
25 evidence of mitigation, if the Board files a petition to revoke probation or an accusation,
26 the Board may suspend Respondent from practice pending the final decision on the petition to
27 revoke probation or the accusation. This period of suspension will not apply to the reduction
28 of this probationary time period.

1 18. **Mental Health Examination:**

2 Respondent shall, within 45 days of the effective date of this Decision,
3 have a mental health examination including psychological testing as appropriate to determine
4 his capability to perform the duties of a registered nurse. The examination will be performed by
5 a psychiatrist, psychologist or other licensed mental health practitioner approved by the Board.
6 The examining mental health practitioner will submit a written report of that assessment
7 and recommendations to the Board. All costs are the responsibility of Respondent.
8 Recommendations for treatment, therapy or counseling made as a result of the mental health
9 examination will be instituted and followed by Respondent.

10 If Respondent is determined to be unable to practice safely as a registered nurse,
11 the licensed mental health care practitioner making this determination shall immediately notify
12 the Board and Respondent by telephone, and the Board shall request that the Attorney General's
13 office prepare an accusation or petition to revoke probation. Respondent shall immediately cease
14 practice and may not resume practice until notified by the Board. During this period of
15 suspension, Respondent shall not engage in any practice for which a license issued by the Board
16 is required, until the Board has notified Respondent that a mental health determination permits
17 Respondent to resume practice. This period of suspension will not apply to the reduction of this
18 probationary time period.

19 If Respondent fails to have the above assessment submitted to the Board
20 within the 45 day requirement, Respondent shall immediately cease practice and shall not resume
21 practice until notified by the Board. This period of suspension will not apply to the reduction
22 of this probationary time period. The Board may waive or postpone this suspension only if
23 significant, documented evidence of mitigation is provided. Such evidence must establish good
24 faith efforts by Respondent to obtain the assessment, and a specific date for compliance must be
25 provided. Only one such waiver or extension may be permitted.

26 19. **Therapy or Counseling Program:**

27 Respondent, at his expense, shall participate in an on-going counseling
28 program until such time as the Board releases him from this requirement and only upon the

1 recommendation of the counselor. Written progress reports from the counselor will be required
2 at various intervals.

3 ACCEPTANCE

4 I have carefully read the above Stipulated Settlement and Disciplinary Order. I
5 understand the stipulation and the effect it will have on my Registered Nurse License. I enter
6 into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and
7 intelligently, and agree to be bound by the Decision and Order of the Board of Registered Nursing.

8
9 DATED: 4-17-05

10 
11 PHILLIP MICHAEL CASTILLO
12 Respondent

13 ENDORSEMENT

14 The foregoing Stipulated Settlement and Disciplinary Order is hereby
15 respectfully submitted for consideration by the Board of Registered Nursing of the Department of
16 Consumer Affairs.

17 DATED: 4/18/05

18
19 BILL LOCKYER, Attorney General
of the State of California

20 
21 GLORIA A. BARRIOS
22 Deputy Attorney General

23 Attorneys for Complainant
24
25
26
27
28

1 BILL LOCKYER, Attorney General
of the State of California
2 GLORIA A. BARRIOS, State Bar No. 94811
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4 Oakland, CA 94612-0550
Telephone: (510) 622-2144
5 Facsimile: (510) 622-2121

6 Attorneys for Complainant

7
8 **BEFORE THE**
BOARD OF REGISTERED NURSING
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. *2005-38*

12 PHILLIP MICHAEL CASTILLO
996 Sonoma Avenue
13 Seaside, CA 93955

ACCUSATION

14 Registered Nurse License No. 364855

15 Respondent.
16

17 Complainant alleges:

18 **PARTIES**

19 1. Ruth Ann Terry, M.P.H., R.N. (Complainant) brings this Accusation solely in
20 her official capacity as the Executive Officer of the Board of Registered Nursing, Department of
21 Consumer Affairs.

22 2. On or about August 31, 1983, the Board of Registered Nursing issued Registered
23 Nurse License No. 364855 to Phillip Michael Castillo (Respondent). The Registered Nurse
24 License was in full force and effect at all times relevant to the charges brought herein and
25 will expire on March 31, 2005.

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JURISDICTION

3. This Accusation is brought before the Board of Registered Nursing (Board), under the authority of the following sections of the Business and Professions Code (Code).

4. Section 2750 of the Code provides, in pertinent part, that the Board may take disciplinary action against any licensee, including a licensee holding a temporary or inactive license, for any reason provided in the Nursing Practice Act.

5. Section 2761(a) of the Code provides, in pertinent part, that the board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for unprofessional conduct, which includes, but is not limited to certain enumerated conduct.

6. Section 2762 of the Code provides, in pertinent part, that unprofessional conduct within the meaning of the Nursing Practice Act includes any of the following:

“(a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish or administer to another, any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in Section 4022.”

“(e) Falsify, or make grossly incorrect, grossly inconsistent, or unintelligible entries in any hospital, patient, or other record pertaining to the substances described in subdivision (a) of this section.”

9. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

1 **DRUGS**

2 8. "Demerol" is a brand name for "Meperidine Hydrochloride," a derivative of
3 pethidine and a Schedule II controlled substance pursuant to Health and Safety Code section
4 11055(c)(17) and a dangerous drug pursuant to Business and Professions Code section 4022.

5 9. "Toradol" is a brand name for "Ketoralac Tromethamine," a nonsteroidal
6 anti-inflammatory drug (NSAID) and is indicated for minor or chronic pain. It is a dangerous
7 drug pursuant to Business and Professions Code section 4022.

8 10. "Morphine" is a Schedule II controlled substance pursuant to Health and Safety
9 Code section 11055(b)(1) and a dangerous drug pursuant to Business and Professions Code
10 section 4022.

11 **FIRST CAUSE FOR DISCIPLINE**
12 **(False or Grossly Inconsistent Record Evidence)**
(Bus. & Prof. Code §2762(e))

13 11. Respondent is subject to disciplinary action under section 2761(a), in conjunction
14 with section 2762(e), for making false, grossly inconsistent, or unintelligible entries in a hospital
15 record pertaining to controlled substances. The circumstances are as follows:

16 12. Respondent was employed as a Staff Nurse II in the Emergency Room (ER)
17 at the Hazel Hawkins Memorial Hospital (Hospital) in Hollister, California, between April 19,
18 1993 and November 15, 2000. During said period of employment, respondent failed to properly
19 chart the disposition of controlled substances, as more specifically set forth as follows.

20 (a) On or about September 15, 1999, respondent withdrew 75 mg of Demerol
21 for Patient A and recorded a "dropped wasted" entry on the Narcotic Record, while failing
22 to follow Hospital Policy by failing to return the narcotic ampule to the Pharmacy and by failing
23 to document the damaged narcotic on a Quality Review form.

24 (b) On or about September 22, 1999, respondent withdrew 60 mg of Toradol
25 for Patient B, charted the administration of 30 mg and recorded 30 mg as "wasted," while failing
26 to follow Hospital Policy by having another licensed staff member witness the wastage and sign
27 the Narcotic Record.

28 ///

1 (c) On or about September 24, 1999, respondent withdrew 10 mg of
2 Morphine, charted the administration of 4 mg and recorded 6 mg as "wasted," while failing
3 to follow Hospital Policy by having another licensed staff member witness the wastage and sign
4 the Narcotic Record.

5 **SECOND CAUSE FOR DISCIPLINE**
6 **(Unprofessional Conduct)**
(Bus. & Prof. Code §2761(a))

7 13. Respondent is subject to disciplinary action under section 2761(a) for general
8 unprofessional conduct. The circumstances are as follows:

9 14. On or about October 6, 1999, respondent was given a written warning by
10 the Hospital. Respondent had already been verbally warned. Respondent was warned about
11 incidents that occurred on September 27 and 28, 1999. A nurse had taken narcotics out of
12 the narcotic drawer to administer to a patient. Respondent had insisted upon administering
13 the narcotics and tried to grab the medications out of her hand. She gave the medications
14 to respondent to prevent an altercation. Respondent proceeded to the patient's bedside to mix
15 the narcotics although there was no reason to do so. Respondent said the patient was likely
16 to refuse the medication. The treating nurse told respondent that the patient had already agreed
17 to the medication. Yet, respondent asked the patient again if he could give her the medication,
18 which she agreed to without hesitation. On September 28, 1999, respondent again mixed
19 narcotics at the patient's bedside. Respondent was warned that he failed to follow the Hospital
20 policy as set more specifically set forth as follows:

21 (a) Not interfere with another nurse's narcotic administration unless asked
22 to do so.

23 (b) Mix all narcotics at the medication cart. In the rare event that a nurse
24 needs to mix narcotics at the patient's bedside, another licensed staff member must be present.

25 (c) Narcotics are not to be transferred from their original ampules for
26 administration unless absolutely necessary.

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PRAYER


WHEREFORE, complainant requests that a hearing be held on the matters herein alleged and that, following the hearing, the Board of Registered Nursing issue a decision:

1. Revoking or suspending Registered Nurse License No. 364855 issued to Phillip Michael Castillo;

2. Ordering Phillip Michael Castillo to pay the Board of Registered Nursing the reasonable costs of the investigation and enforcement of this case pursuant to Code section 125.3; and

3. Taking such other and further action as may be deemed necessary or proper.

DATED: 8/31/04


RUTH ANN TERRY, M.P.H., R.N.
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California

Complainant